



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, OLC, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67;
2. An Order for the return of double the security deposit - Section 38;
3. An Order for the Landlord’s compliance - Section 62; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord did not attend the hearing. I accept the Tenant’s evidence that the Landlord was served with the application for dispute resolution and notice of hearing (the “Materials”) by registered mail in accordance with Section 89 of the Act. The Tenant provided a tracking number for that mail. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that the Landlord is deemed to have received the Materials.

The Tenant was given full opportunity to be heard, to present evidence and to make submissions. As the tenancy ended and as an order for a landlord’s compliance is only relevant to an ongoing tenancy I dismiss the claim for that order.

Issue(s) to be Decided

Is the Tenant entitled to return of double the security deposit?

Is the Tenant entitled to reimbursement for overpaid rent?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy agreement was signed on September 5, 2016 and the tenancy started on that day. Rent of \$2,100.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$1,050.00 as a security deposit. While walkthroughs were done at the onset and end of the tenancy no subsequent condition inspection reports were prepared by the Landlord. The tenancy ended on January 31, 2017 and the Tenant provided its forwarding address on or about that date. Although at the move-out the Landlord indicated that the unit was good and that the security deposit would be returned, the Tenant did not receive its return until February 26, 2017. The Tenant does not believe that the envelope was delivered by the post office as it had been folded several time and stuffed into the Tenant's mail box.

The Tenant claims return of double the security deposit. The Tenant paid full rent for September 2016 and as the tenancy did not start until September 5, 2016 the Tenant claims a rent refund of \$240.00. The Tenant calculates this amount from a per diem rate of \$70.00 x 4 days.

Analysis

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Based on the undisputed evidence that the Landlord did not return the security deposit within 15 days of January 31, 2017, I find that the Landlord must pay the Tenant double the

security deposit in the amount of **\$2,100.00**. Deducting the returned amount of **\$1,050.00** leaves **\$1,050.00** owed to the Tenant.

Section 26 of the Act provides that a tenant must pay the rent as provided under the tenancy agreement. Based on the undisputed evidence of the Tenant, I find that the Tenant has substantiated that it overpaid rent by **\$280.00**. I find that the Tenant is therefore entitled to the reimbursement of this rental amount. As the Tenant's application has met with success I find that the Tenant is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$1,430.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$1,430.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 24, 2017

Residential Tenancy Branch